SBCivil Writ Petition No.6081/2003

M/s K.R.Minerals (Pvt) Ltd. & Anr.
v.
M/s Kanhaiya Lal & Anr.

Date of Order :: 8th May, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Vineet Mathur, for the petitioners.
Mr. Jitendra Gang, for the respondents.

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In a suit instituted under Order XXXVII CPC the trial court while granting leave for defence to the defendant petitioners subject to the condition of executing solvent sureties for a sum of Rs.8 lacs, also ordered for adhering the procedure applicable in suits instituted in ordinary manner.

The correctness, validity and propriety of the order aforesaid dated 27.5.2003 is under challenge in the instant petition for writ to the extent the defence is made subject to condition of execution of solvent sureties.

According to counsel for the petitioners no such solvent sureties could be demanded by the trial court as it is not within its jurisdiction. The counsel for the petitioners also states that the suit under Order XXXVII CPC itself is not maintainable as no written agreement was executed between the parties. To substantiate the contention, reliance is placed upon a Division Bench judgment of Hon'ble Calcutta

High Court in the case of M/s. West Bengal Decorating Co. v. M/s. Damodar Das Daga, reported in AIR 1982 Calcutta 386.

Heard counsel for the parties.

I do not find any force in the contention of counsel for the petitioners that the court below erred while demanding solvent sureties in a tune of Rs.8 lacs. It is well settled that a broad discretion vests with a court to impose reasonable condition while granting leave to defend a suit instituted under Order XXXVII CPC. The provisions of Order XXXVII Rule 3(5) CPC are quite clear in this regard. No illegality, therefore, has been committed by the trial court while imposing the condition as referred above.

The another contention of counsel for the petitioners as to the suit itself is not competent is also having no merit. It is true that in the application seeking leave for defence it is averred by the petitioners that no written agreement was executed but it is the position admitted that in plaint it is stated that the recovery of money said to be made is arising out of a written contract. In the case of M/s. West Bengal Decorating Co. (supra) Division Bench of Calcutta High Court was dealing with a case where recovery of price of goods sold and delivered was subject matter of a suit instituted under Order XXXVII

CPC though it was not founded on a written contract. The Court, therefore, held that the plaintiff must show both in stating and proving his case that his right to recover stands on a written contract, on an enactment or on a guarantee as prescribed under Order XXXVII(2)(b) CPC. In the instant matter plaintiff has stated that his right to recover stands on a written contract that is a purchase order bearing signatures of both the parties. The plaintiff, therefore, can maintain the suit under Order XXXVII CPC, though he is still require to prove the written contract. As such, the law laid down by the Calcutta High Court in the case of M/s. West Bengal Decorating Co. (supra) is having no application in present controversy.

In view of whatever discussed above, I do not find any merit in this petition for writ, therefore, the same is dismissed.

(GOVIND MATHUR),J.

kkm/ps.